STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
May 10, 2012

In the Matter of AL-SADOON, Minors.

No. 306768
Wayne Circuit Court
Family Division
LC No. 09-490600-NA

Before: DONOFRIO, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals by right the lower court's order terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

This Court "review[s] for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). "If the court finds that there are grounds for termination of parental rights and [then finds] that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The lower court's best-interest determination is also reviewed for clear error. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

I. STATUTORY GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

Respondent first argues that the lower court erred by finding statutory grounds to terminate her parental rights. We disagree.

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(*i*), (g), and (j), which provide for termination of parental rights if:

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds [that]:

> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
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> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent that the child will be harmed if he or she is returned to the home of the parent.

The conditions that led to adjudication (persistent substance abuse and lack of basic parenting skills) continued to exist at the time of the termination hearing. Respondent did not come into substantial compliance with her treatment plan, and her failure to address her drug use impaired her ability to provide proper and safe care for her children. See *JK*, 468 Mich at 223 (failure to comply with parent-agency agreement is evidence of failure to provide proper care and custody).

Although respondent denies a history of drug use, when two of her children were born, they tested positive for opiates. She submitted only intermittent drug screens in 2010 and 2011. In 9 of 12 drug screens, she tested positive for opiates, benzodiazepines, or both. Respondent was terminated from substance abuse counseling due to missed sessions. Because respondent failed to complete substance abuse counseling and submit all requested drug screens, there is no evidence that she addressed the drug problem that interfered with her ability to parent. Respondent's suspected opiate addiction put the children at risk of harm in her care. Accordingly, the evidence suggests that respondent has not addressed her substance abuse issues.

Moreover, respondent has failed to provide proper care and custody for her children, and it is unlikely that she will be able to do so within a reasonable time. Respondent has been consistently unemployed during adulthood. She has been jailed multiple times for warrants arising from unpaid traffic tickets. The instructor of her parenting class recommended that she retake the classes because of her sporadic attendance. She missed several scheduled visits with her children. She was convicted of retail fraud and was on probation. She was unable to demonstrate that she had a legal source of income or suitable housing.

Respondent blames her probationary status for her inability to comply with her treatment plan, despite the fact that her probationary status is the result of her own actions. Respondent claims that the weak economy is a sufficient basis on which to excuse her from her obligation to financially support her children. This assertion is unpersuasive. In short, termination of parental rights was proper under MCL 712A.19b(3)(c)(*i*), (g), and (j).

Respondent argues that she suffers from low cognitive functioning and other mental health issues, and that the lower court never determined whether she suffered from a disability

under the Americans with Disabilities Act, 42 USC 12101 *et seq.* Respondent therefore argues that the lower court erred, and that she was entitled to special accommodations. We disagree.

The ADA requires a public agency to make reasonable accommodations for individuals with disabilities so that all persons may receive the benefits of public programs and services. *Terry*, 240 Mich App at 25. Thus, reunification services and programs provided by petitioner must comply with the ADA and must accommodate a respondent's disabilities. *Id.*

Here, however, there was no indication that an ADA accommodation was necessary because respondent failed to present any evidence that she has a disability under the ADA. Indeed, the evidence on the record suggests the contrary: the mini mental status exam (MMSE) in her 2011 psychological evaluation showed that she has no cognitive impairment. It was recommended that respondent retake parenting classes because she did not grasp all of the concepts due to her sporadic attendance, not because of any cognitive disability. Accordingly, respondent's arguments are without merit.

II. BEST INTEREST OF THE CHILDREN

Respondent next argues that the lower court erred in its best-interest determination. We disagree.

Despite respondent's assertion to the contrary, termination of parental rights was in the best interests of the children. "If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent." *Terry*, 240 Mich App at 28. As explained above, respondent has consistently demonstrated that she is unable to care for her children and provide them with a stable home. Accordingly, she has demonstrated that she is unable to "meet her irreducible minimum parental responsibilities." She has demonstrated that she is unwilling to address her drug use, and that she is unable to exercise appropriate parental judgments. There is no evidence that respondent has the capacity to provide for the children's basic needs.

Respondent argues that, despite her substance abuse problems and her lack of parenting ability, she has a strong bond with the children. However, this contention does not undermine the lower court's best-interest finding. The parent-child bond, without more, does not provide sufficient justification to maintain the relationship in light of respondent's persistent drug use and inability to properly care for her children. Thus, the court did not err in its best-interest determination.

III. INDIAN CHILD WELFARE ACT

Respondent argues that the notice provisions of the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*, were not satisfied. We disagree.

We review de novo whether the lower court followed the notice requirements of the ICWA, as the issue involves a question of statutory interpretation. *In re IEM*, 233 Mich App 438, 443; 592 NW2d 751 (1999). Under the ICWA, an Indian child's tribe is entitled to notice of termination of parental rights hearings where the court knows or has reason to know that an Indian child is involved. 25 USC 1912(a). Further, both the ICWA and MCR 3.965(B)(2)

require that a lower court directly inquire about the tribal status of the parents and the minor child at the time of the preliminary hearing. *In the Matter of TM (After Remand)*, 245 Mich App 181, 187; 628 NW2d 570 (2001). If it is determined that a child may be an Indian child, the lower court must give notice of the proceedings to the Indian tribe. See *IEM*, 233 Mich App 438, 446-447.

Here, however, there is no reason to believe the children had any Indian heritage. In the lower court, respondent never stated, suggested, or argued that her children were members, or eligible to be members, of a tribe or band. The record does not contain any evidence suggesting possible tribal membership and respondent does not offer any such evidence on appeal. In fact, respondent described herself as "Puerto Rican, Caucasian and African American." The children's legal father was not American-born and their biological father was of Arab heritage. Thus, the lower court neither knew nor had reason to know that these proceedings involved Indian children. Accordingly, respondent failed to assert a factual basis that would give rise to rights under the ICWA.

The lower court did not inquire about the tribal status of respondent or the children as required by MCR 3.965(B)(2). However, the Michigan Supreme Court has held that it "will not reverse an otherwise proper termination absent a showing that a party suffered an actual deprivation of an important right." *In re Osborne*, 459 Mich 360, 369 n 10; 589 NW2d 763 (1999). Respondent has not shown that the lower court's failure to inquire about tribal status in fact deprived her of an important right. Accordingly, any error in the lower court's failure to inquire about tribal status was harmless.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro